FILE COPY

Office - Supreme Court, U. S.
FILED
JUN 10 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 165

GEORGE W. PEELER,

Petitioner,

vs.

MRS. ESSIE COOK CAVER PEELER,

Defendant.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI AND BRIEF IN SUPPORT THEREOF.

WILLIAM G. CAVETT,
1902-04 Columbian Mutual Tower,
Memphis, Tennessee,
Attorney for Petitioner.

INDEX

	Page
Petition	1
Summary Statement of the Matter Involved	2
Jurisdiction of This Court	8
Specification of Errors on the Questions Presented,	8-17, Inc.
Reasons Relied On for Granting the Writ	17-26, Inc.
Brief in Support of Petition	27
Statement of Case	27
Summary of Argument	28
Federal Question	28
Were federal questions properly raised	29
Could Mrs. Peeler Who Was the Wife of George W. Peeler Purchase on May 20, 1940 for $435.00 the Ancestral Home of Her Husband and Thereby Acquire Title Adversely to Him,	29-36, Inc.
Is the Question of Estoppel as to Vacant Lot in Fact and in Law a Screen or a Sham, or Is It a Discrimination Against Mr. Peeler in Favor of Mrs. Peeler and Unsound under the Documentary Facts Appearing in This Record,	36-41, Inc.
Was Mrs. Peeler's Proceeding in the Chancery Court, Exhibit B, Void under the Due Process Clause of the Fourteenth Amendment Pleaded in Mr. Peeler's Bill and Pointed Out to the Supreme Court in Assignments of Error C and D	41-44, Inc.
Conclusion	44-45, Inc.

Table of Cases

Allen v. *Poole*, 54 Miss. 334 32
Advance Lbr. Co. v. *Laurel Nat'l Bk.*, 86 Miss. 419, 38 So. 313 21
Aldridge v. *First Natl. Bk.*, 144 So. 469 21
Beaman v. *Beaman*, 90 Miss. 762, 44 So. 987, 4, 7, 9, 15, 18, 25, 33

Page

Beaverton v. *Cramer*, 123 Miss. 848, 86 So. 578 ..... 10, 42
Bias v. *Vance*, 3 George, 32 Miss. 198 ..... 11, 20, 41, 43
Brown v. *Board Levee Comm.*, 50 Miss. 468 20
Burgess v. *Seligman*, 107 U. S. 20 (also 2 Pomeroy Eq. Jur. Sec. 807) 6, 25
Burns v. *Burns*, 133 Miss. 485, 97 So. 814 21
Cameron v. *Lewis*, 56 Miss. 601 ..... 18, 34, 36
Clark v. *Rainey*, 72 Miss. 151, 16 So. 499 18
Clay v. *Clay*, 134 Miss. 658, 90 So. 818 3
Col. Mut. Ins. Co. v. *Jones*, 160 Miss. 41, 135 So. 149 . 31, 38
Col. Star. Milling Co. v. *Brand*, 115 Miss. 625, 76 So. 557 21
Cudalac v. *Strong*, 67 Miss. 705, 7 So. 543 ..... 21, 42
Davidson v. *Wallace*, 53 Miss. 475 32
Davis v. *Davis*, 305 U. S. 32 3
Davis v. *Wechsler*, 263 U. S. 22 ..... 9, 17, 29, 41
Day v. *Cockran*, 24 Miss. 261 32
Delta Ins. & Realty Co. v. *Interstate Fire Ins. Co.*, 113 Miss. 542, 74 So. 420 ..... 21, 41
Dunwiffie v. *Glas*, 11 Miss. 449, 71 So. 745 21
Edwards et al. v. *Toomer et al.*, 14 S. W. 75 20
Estes v. *Jackson*, 111 N. C. 145 25
Fox v. *Coon*, 64 Miss. 465 32
Gilliam v. *Philadelphia*, 70 U. S. 713, 18 L. Ed. 96, 99 . 44
Griffin v. *Griffin*, 90 L. Ed. 534 ..... 3, 10, 11, 20, 21, 42
Gulf, C. & B. Ry. Co. v. *Ellis*, 165 U. S. 150, 154 36
Gwin et al. v. *McCarroll*, 1 S. W. 351 20
Hamblet v. *Harrison*, 80 Miss. 118, 31 So. 580 18
Harrison v. *Harrison*, 56 Miss. 174 32
Hatchett v. *Thompson*, 165 So. 113, — Miss. —, 10, 18, 32, 42
Henry County et al. v. *Standard Oil Co.*, 167 Tenn. 487, 71 S. W. 2d, 685, 98 A. L. R. 1483 ..... 12, 23, 40
Hitlow v. *Roylance*, 25 Utah 729, 69 Pac. 660, 58 L. R. A. 723, Am. St. Rep. 84 ..... 12, 23
Holcomb v. *Boyston*, 151 Ill. 297 25
Howell v. *Shannon*, 80 Miss. 598, 31 So. 965 ..... 18, 33
Hunt v. *Johnson*, Freeman Chancery 282 20
Jones et al. v. *Merrill et al.*, 69 Miss. 747, 11 So. 33 ..... 18, 32

Page

Key et al. v. *Harris et al.*, 116 Tenn. 161, 171 30
King v. *Pillow*, 90 Tenn. 287, 25 R. C. L. 324 10
Larson v. *Larson*, 82 Miss. 116, 33 So. 717, 3, 10, 11, 20, 21, 41
Louisville & N. R. R. Co. v. *Schmidt*, 177 U. S. 230 .. 3
Massie v. *Watts*, 6 Cranch 148 10
McCallum v. *Spinks*, 129 Miss. 237, 91 So. 694 ..... 10, 42
McGee v. *Holmes*, 63 Miss. 50 32
McLaughlin v. *Green*, 48 Miss. 175 ..... 18, 31
Meeks v. *Meeks*, Tenn. App. 179 S. W. (2d) 189, 191 .. 2
Miles v. *I. C. R. R. Co.*, 315 U. S. 698 ..... 8, 38, 41
Missouri v. *Lewis*, 101 U. S. 22 19
N. O. J. Grt. Rr. Co. v. *Hemphill*, 35 Miss. 1, 24 20
Nunnelly v. *Sou. Iron. Co.*, 94 Tenn. 397, 29 S. W. 361, 21 L. R. A. 421 40
Pennoyer v. *Neff*, 95 U. S. 714 ..... 3, 4, 10, 12, 21, 28, 42
Pharris v. *Comer*, 3 Smedes M. (Miss.) 87 ..... 10, 42
Pittman v. *Home Owners Corp.* 308 U. S. 21 8
Pollock v. *Farmer's Loan & Trust Co.*, 158 U. S. 689, 39 L. Ed. 1108 34
Power Mfg. Co. v. *Saunders*, 274 U. S. 590, 497 29
Re Debs, 158 U. S. 565, 39 L. Ed. 1021, 1105 44
Relf & Chew v. *Randolph*, 1 Miss. 1 ..... 20, 41
Richmond v. *Richmond*, 18 Tenn. 344 24
Robinson v. *Lewis*, 68 (Miss.), 8 So. 258, 10 L. R. A. 106, 29 Am. St. Rep. 254 ..... 4, 18, 29
Scott v. *Scott*, 73 Miss. 575 ..... 31, 38
Sharp v. *Sharp*, 2 Sneed, 496 2
Shell v. *Shell*, 2 Sneed 717 2
Sloan v. *Sloan*, 55 Tenn. 422 ..... 13, 24, 38
Smith v. *Smith* (Ch. App.), 53 S. W. 1000 2
Sou. Ry. Co. v. *Painter*, 314 U. S. 155, 159-60 41
Spokane & E. C. Ry. Co. v. *Whitley*, 237 U. S. 487 .... 25, 39
State v. *Bank of Commerce*, 96 Tenn. 592 3
State et al. Rice v. *Large*, 175 Miss. 330, 157 So. 699 .. 6, 25
Stewart v. *Matheney*, 66 Miss. 21, 5 So. 387, 14 Am. St. Rep. 530 ..... 18, 32
Tablor Credup Co. v. *Mitchell*, 62 Miss. 432, 439 20
Tate v. *Tate*, 126 Tenn. 169, 148 S. W. 1042 ..... 6, 25, 40
Truax v. *Corrigan*, 257 U. S. 312 ..... 9, 19, 25, 28, 35

Page

Wade v. *Barlow*, 99 Miss. 33, 54 So. 662 ..... 18, 34
Walker v. *Williams*, 84 Miss. 392, 350 So. 415 ..... 18, 34
Watson v. *Watson*, 25 Tenn. App. 28, 149 S. W. (2d) 953 2
Whitehead v. *Kirk*, 104 Miss. 776, 61 So. 737, 51 L. R. A. (N. S.) 187 ..... 7, 29
Wyatt v. *Wyatt*, 81 Miss. 219, 32 So. 450 ..... 18, 33
York v. *York*, 187 Miss. 465, 193 So. 330 21

STATUTES

Code of Tennessee, 1932, Sec. 10343 3
Code of Mississippi, 1942:
Sec. 1285 5
Sec. 1300 5
Sec. 1148 6
Sec. 2731 ..... 11, 43
Sec. 2745 ..... 13, 37
Code of Tennessee, 1932, Sec. 8449 ..... 13, 38

FEDERAL STATUTES

Act of Congress, 1790 Ch. 11, 28 U. S. C. A. 687 2
Act of Congress, 1925, 43 Stat. 937, 28 U. S. C. A. 344 8
U. S. Const., Art. 4, Sec. 1 ..... 17, 24
U. S. Const., Fourteenth Amendment, 3, 4, 5, 9, 12, 16, 18, 21, 28

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.

GEORGE W. PEELER,

Petitioner,

vs.

MRS. ESSIE COOK CAVER PEELER,

Defendant.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI AND BRIEF IN SUPPORT THEREOF.

Petition

Petitioner prays this Court to review on writ of certiorari the final judgment of the Supreme Court of Mississippi rendered on the 25th day of February, 1946, in the case styled *George W. Peeler* v. *Mrs. Essie Cook Caver Peeler.* The *final judgment* was rendered when a petition for a rehearing of suggestion of error was overruled (R. —). No memorandum of opinion was given on February 25, 1946, and only an order overruling was entered. The original opinion appears in the February 7th issue of the *Southern*

Reporter, 24 So. (2d) 338. With more than forty years practice in the State and Federal Courts, and thirty-six years before This Honorable Court, Mr. Peeler's Counsel carefully drew the bill that was filed in the Chancery Court of Prentiss County, Mississippi, to cancel and remove the *two clouds upon his title* to his ancestral home, probably worth eight to fifteen thousand dollars, and a vacant adjoining lot probably worth fifteen hundred dollars. Complainant filed with this carefully drawn bill Exhibits A, B, C and D which *were records certified to under the Acts of Congress,* 1790, Ch. 11, 28 U. S. C. A. 687.

Summary Statement of the Matter Involved

Exhibit A was the *entire record* of the proceedings had in 1942 in the Circuit Court of Shelby County, Tennessee, in which George W. Peeler sued Mrs. Peeler for a divorce upon the grounds of cruel and inhuman treatment and in which she had come to the City of Memphis shortly before that date with a pistol in her bag seeking an interview with him and threatening to take his life, and saying that she wanted to have one more meal with him, thereby meaning to poison him. And also upon the ground that she had constantly and continually charged him with adultery every time he tipped his hat or spoke to a lady. This record shows that Mrs. Peeler *appeared and filed her answer* denying the averments in Mr. Peeler's bill. The final judgment of the Tennessee Circuit Court was in favor of George W. Peeler and against Mrs. Peeler upon the grounds of cruel and inhuman treatment, and the court costs were adjudged against her, and was final, under the Tennessee law in *Meeks* v. *Meeks,* Tenn. App. 179 S. W. (2d) 189, 191. And in the decisions of the Supreme Court of Tennessee such action was sustainable under Tennessee Law. *Sharp* v. *Sharp,* 2 Sneed 496; *Shell* v. *Shell,* 2 Sneed 717; *Smith* v. *Smith* (Ch. App.), 53 S. W. 1000; *Watson* v. *Watson,* 25

Tenn. App. 28, 149 S. W. (2d) 953. It cannot be doubted that Mrs. Peeler having appeared and answered *was bound by this decision*, even under the decisions of the Supreme Court of Mississippi, *Clay* v. *Clay*, 134 Miss. 658, 90 So. 818, and under the unquestioned and settled law of this Court in *Davis* v. *Davis*, 305 U. S. 32; *Louisville & N. R. Rr. Co.* v. *Schmidt*, 177 U. S. 230, and *Pennoyer* v. *Neff*, 95 U. S. 714. By virtue of Sec. 10343 of Tennessee Code of 1932 and the decisions of the Tennessee Supreme Court in *State* v. *Bank of Commerce*, 96 Tenn. 592, and the cases cited and followed, it is well settled:

> "That *all the issues*, which *might have been raised* and litigated are concluded, the same as if they had been directly adjudicated, and *included in the judgment or decree.*"

This is important because the Supreme Court of Mississippi in its opinion, in fact, has attacked, in the results it reached, the decision and effects of the Tennessee Court, properly certified to under the Acts of Congress, and as we view it, and the Supreme Court of Mississippi did not fully recognize and give full faith and credit to this Tennessee record but has *screened denial of*, or *discrimination* against *these federal rights* under the guise of enforcing its local law, as will be more fully set forth and discussed in the brief.

Exhibit B is a certified copy of the record in the case styled *Mrs. Essie Peeler* v. *George W. Peeler* filed in the Chancery Court of Prentiss County, Mississippi, in which proceedings there was *no due process of law* had upon George W. Peeler, nor was his title to his property in any lawful manner brought before the court, on *in custodia legis*. This proceedings was undoubtedly void even under the Mississippi decisions that have been established for over 40 years in *Larson* v. *Larson*, 82 Miss. 116, 33 So. 717, but especially was it void under the Fourteenth Amendment

Clause to the Federal Constitution, and the noted case of *Pennoyer* v. *Neff*, 95 U. S. 714, and all of the other cases since 1878 ending with the case of *Griffin* v. *Griffin*, February 25, 1946, and which will appear in 90 L. Ed. 534, which holds:

> "Due process forbids any exercise of judicial power, which but for the Constitutional infirmity, would affect a defendants rights".

The decree of the Mississippi court in Mrs. Peeler's case in Chancery court of April 13th, 1940 (R. —), attempted to divest out of George W. Peeler *all his title and right to his ancestral home* and the vacant lot adjoining and *vest it in Mrs. Peeler.*

Not only was the want of "due process of law" pointed out in the pleadings filed by Mr. Peeler in his bill as set forth in the Fourteenth Amendment, but this question was directly called to the attention of the Supreme Court in *Assignment of Error "B" and "C"* (R. —). The Supreme Court of Mississippi neither mentioned nor passed upon these questions except in the results of their opinion, and decree.

Exhibit C attached to Mr. Peeler's bill was a copy of a mortgage on his home which was executed by George W. Peeler and his wife Essie Peeler to the Bank of Booneville to secure the sum of $400.00 for borrowed money.

Exhibit D was a certified copy of the trustee's deed in which there was a foreclosure by the Trustee and Mrs. Peeler, *while the wife of George W. Peeler,* attempted to purchase said property for $435.00 and had deed made to her. In the case of *Robinson* v. *Lewis,* 68 Miss. 69, 8 So. 258, 10 L. R. A. 106, 29 Am. St. Rep. 254, and the case of *Beaman* v. *Beaman,* 90 Miss. 762, 44 So. 987, a *rule of law and property was established in Mississippi* which has consistently been enforced in the courts and *applied to all*

persons in like circumstances and situations for the last 60 years in which the Courts have held in the above case and other cases that a *wife cannot acquire title to her husband's land by buying it at a foreclosure sale* but all that she does get, is a *lien for the money she has expended.* The bill sought to declare this sale void except as to the money she had paid out, which amount was tendered or offered in said bill, Sec. 14. In *assignment of error D* before the Supreme Court of Mississippi and also *in the pleadings* it was pointed out that the Federal Constitution provides in the Fourteenth Amendment Section 1:

> "That no State shall • • • deny to any person within its jurisdiction the equal protection of the laws."

And that unless these rights and rules of property and equity long established in Mississippi and which had been applied to all other litigants in like circumstances, were applied against Mrs. Peeler then the "equality of law" of the Federal Constitution would be offended, and this Federal right should not be denied to George W. Peeler.

The defendant, Mrs. Peeler, instead of filing a demurrer, appeared and answered Mr. Peeler's bill. She *did not deny anything set forth in Exhibits A, B, C, and D.* And under Sec. 1285 of Mississippi Code of 1942 these exhibits were made a part of the bill by statutory enactment. Mrs. Peeler however denied *the effect of these instruments* as pleaded by the complainant.

Complainant then filed, under Sec. 1300 of the Mississippi Code of 1942, a motion *to strike the answer as insufficient* in the eyes of the law as the answer raised no controlling legal questions of fact, but questions of law only.

This raised the *questions of law* the same that *a demurrer would have raised,* had one been interposed by the defend-

ant, Mrs. Peeler. In fact *she could not have avered against and contradicted the exhibits which were documents properly certified to,* and in fact *did not contradict them.* The Chancellor, without giving *any written findings of fact or law,* overruled the motion of Mr. Peeler to strike the answer of Mrs. Peeler for insufficiency, but wisely exercised that discretion provided by Sec. 1148 of the Code of 1942, and granted an appeal to Mr. Peeler to the Supreme Court of Mississippi to:

"Settle all controlling principles of law in this lawsuit" as provided by that statute. See, *State et al. Rice* v. *Large,* 175 Miss. 330, 157 So. 699.

The Supreme Court of Mississippi after hearing the cause on a transcript, refused to pass expressly on the validity of Mrs. Peeler's court proceedings set forth in Exhibit B, but applied a far-fetched estoppel proposition that *after this court proceedings had ended,* which Mrs. Peeler had instituted, that Mr. Peeler wrote a supposed to be letter to a relative, at Booneville saying that his wife should not have begun and prosecuted a proceedings to take his property from him as he had intended to let her use it and never take it away from her (R. 58). We think that this was a guise or attempt to enforce a local law of Mississippi of an estoppel, to *sustain the court proceedings instituted by Mrs. Peeler,* and of which she was the *sole architect* and of which *she knew everything* and knew that said court proceedings *was void under the "due process" clause of the Fourteenth Amendment to the Federal Constitution.* And in addition thereto under the law as announced in *Burgess* v. *Seigman,* 107 U. S. 20 (also 2 Pomeroy Eq. Jur. Sec. 807); *Tate* v. *Tate,* 126 Tenn. 169 and cases collected, and in fact all of the decisions in the law books so far published holding that where the effect of a court record to which the persons to be affected were parties and to whom all the facts were known, or *where both parties*

have the same means of ascertaining the truth from its court records, there cannot be an estoppel. The far-fetched legal conclusion was applied by the Supreme Court of Mississippi, as we view said opinion, *only to the vacant lot* probably worth Fifteen Hundred Dollars and was not applied to Mr. Peeler's home probably worth Fifteen Thousand Dollars. The Supreme Court of Mississippi held that Mrs. Peeler could acquire title to her husband's ancestral home by purchase at a foreclosure sale. The decision of the Supreme Court of Mississippi did not see proper to discuss its former decision rendered in 1913, *Whitehead* v. *Kirk,* 104 Miss. 776, 61 So. 737, 51 L. R. A. (NS) 187, in which that court, citing and following the *great wealth of authority in America* and applying this "public policy" relationship of husband and wife, a settled law, and discuss-the law, surrounding same at great length, said:

> "The *rule* is not founded exclusively upon an *actual voluntary confidence* reposed by one of the married pair in the other, but also upon the *unavoidable confidence which the intimacy of the marriage state necessarily produces.*"

Thus the Supreme Court of Mississippi for 33 years has said to all litigants of the State, and applied to all persons and litigants in that State, that whether the married pair were a "lovey dovey affair" or an "affair with some friction" that the *law would not investigate the amount of friction* or the amount of "lovey doveyness" but if they were married and that marriage relations existed, that the *intimacy of the marriage state produces such confidential relations that the husband cannot buy in and acquire property of the wife,* nor *the wife buy in and acquire title of the husband.* And in *Beaman* v. *Beaman,* 90 Miss. 762, 44 So. 897, the Court expressly held and settled as law that *the wife could not buy in her husband's property and hold the title,* and announced the

law as such (which was not applied in Mr. Peeler's case in violations of the equality clause), and the court held:

> "Neither he nor she, *being the wife,* could acquire adverse rights by purchase, because it is in controversion of public policy."

Mrs. Charles Beeman bought in at foreclosure sale, the *title and interest* of her husband and all co-owners, and *wholesale* was held *void.*

Jurisdiction of This Court

Jurisdiction of this Court is based upon Section 237 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 937, 28 U. S. C. A. 344 *(Pittman* v. *Home Owners Corp.,* 308 U. S. 21; *Miles* v. *I. C. R. R. Co.,* 315 U. S. 698; *Griffin* v. *Griffin,* Feb. 25, 1946, — U. S. —, 90 L. Ed. 534 and like cases), authorizing petitions for writ of certiorari to be prayed for and issued to the highest courts of the various states:

> "Where any title, right, privilege, or immunity is especially set up or claimed by either party under the constitution."

In this *Peeler* case title, right, privilege and immunity were expressly *claimed in the bill* filed by George W. Peeler and *in the assignment of error* before the Supreme Court of Mississippi, and that Court is the "Highest court of that State" as provided by the constitution of that State.

Specifications of Errors on the Questions Presented

Your petitioner submits that the Supreme Court of Mississippi was in error in the following respects:

1

Clothed with some human error or under the guise of enforcing a local law which might legalize a wife buying

in her husband's property the Supreme Court of Mississippi cited Am. Jur. Vol. 26, p. 37, which law related *solely and alone* to "execution or judicial sale" both of which kinds of sales are made under the scrutinizing eyes of the Court. This was not applicable law to the *Peeler* case and this Peeler sale involved in this case was where the *wife bought in the property at a foreclosure sale,* not made under eyes of a court and it had been expressly held for over 50 or 60 years that *the wife could not so purchase and acquire and hold title,* purchased at a harsh foreclosure sale of her husband's property. *Beaman* v. *Beaman,* 90 Miss. 762, and *many other cases* so holding, which have been applied against all litigants of that State, except Mrs. Peeler in this case. The "equality clause" absolutely forbids a State through its courts from applying its law to its residents and litigants in the courts and then applying a different law under the same circumstances to another person and a non resident like Mr. Peeler. It has well been said by this court; Mr. Ch. J. Taft, that great judge of equity:

> "It is beside the point to say plaintiffs had no vested right in equity relief and that taking it away does not deprive them of due process of law. The equality clause xx forbids the granting of equitable relief to one man and denying it to another under like circumstances and in the same territorial jurisdiction."
>
> *Truax* v. *Corrigan,* 257 U. S. 312, and
> *Davis* v. *Wechsler,* 263 U. S. 22 and like cases.

2

The Supreme Court of Mississippi erred in failing to expressly decide that the proceedings set forth in Exhibit B, being the entire proceedings in Mrs. Peeler's lawsuit against Mr. Peeler where *no process was ever issued or served upon George W. Peeler,* nor *did he appear in court,* nor was *his property brought in custodia legis,* and therefore there was no "due process" of law as defined in *Pennoyer*

v. *Neff*, 95 U. S. 714 and like cases extending down to *Griffin* v. *Griffin*, 90 L. Ed. 534. It was expressly held in 1903 or 43 years ago in *Larson* v. *Larson*, 82 Miss. 116, 33 So. 714 where the pleadings and facts were identical in legal substance to those in the case of *Essie Peeler* v. *George W. Peeler* in the Chancery Court of Mississippi, Exhibit B, in which that court had established for at least 43 years that such process was absolutely void. In addition thereto, it was called to the attention of the Supreme Court of Mississippi that this *published notice* of Mr. Peeler was the *only process* issued by the Clerk, Mr. Frank Felker, *and it did not have attached his official seal as clerk* as is *mandatorily required* by Mississippi statutes, and therefore *such process without the official seal* of the clerk issuing it, *has heretofore been held as void* in Mississippi for at least 75 years, *Pharris* v. *Comer*, 3 Smedes M. (Miss.) 87. *Beaverton* v. *Cramer*, 123 Miss. 848, 86 So. 578, *McCallum* v. *Spinks*, 129 Miss. 237, 91 So. 694 and *Hatchett* v. *Thompson*, 165 So. 113, — Miss. —. Thus it is clear the Supreme Court of Mississippi failed or neglected to settle all controlling principles of law, Sec. 1148, Code 1932, and to *apply the law equally* in respect to the equality clause of the Federal Constitution and apply the law equally in favor of Mr. Peeler that it has applied to other litigants for 75 years in that State, and that court also in effect used this proceeding, Ex. B., on which to bottom an estoppel on the vacant lot involved.

The record Exhibit B shows conclusively and without doubt and is admitted by the defendant Mrs. Peeler, that George W. Peeler was never served with process but that he was beyond the jurisdiction of the Court and could not be served, and it has been settled law by this Court in *Massie* v. *Watts*, 6 Cranch 148, and is settled law in other courts, *King* v. *Pillow*, 90 Tenn. 287, and 25 R. C. L. 324 that the *title to real estate exists in the owner and follows him where*

he is found. Then Peeler being in Memphis, Tennessee the *title to this property was in him.* The Supreme Court of Mississippi in failing to pass on the validity of the process in Mrs. Peeler's lawsuit practically held these proceedings *valid* (and in effect by bottoming an estoppel as to the vacant lot) in this language:

> "The decree further found that the wife was in possession of this property in the exercise of her homestead rights thereto, that she had surrendered it to the jurisdiction of the Court or 'brought it before the court'."

The Court should have followed its own decision which had settled this question in conformity to the due process clause of the Fourteenth Amendment in *Larson* v. *Larson,* 82 Miss. 116, 33 So. 717 and this law should have been applied to Mr. Peeler and against Mrs. Peeler the same that it was applied against Mrs. Larson and in favor of Mr. Larson, as Mrs. Larson was in possession of the property in Biloxi, Mississippi but *she could not lift shoulder and bring the title* that was in Mr. Larson *in Minnesota* into court any more that could Mrs. Peeler *bring into court Mr. Peeler's title,* when Mr. Peeler was in Tennessee and the title was in him without following the statutes for *bringing the title into court* and placing the property in *custodia legis.* Sec. 2731 Miss. code 1942, which has been the statutory law for 90 years or more, provided:

> "If the land of the non resident * * * be the subject of such suit, a writ of attachment *shall be issued* and *shall be levied* by the sheriff or other officer as such writs at law are required to be levied on land, and shall have like effect."

The Supreme Court of Mississippi should have followed its former decisions in *Bias* v. *Vance,* 3 George, 32 Miss. 198 and 14 other decisions which settled the law 89 years or

more ago in Mississippi that unless there was a *seizure of the land—the property, the title could not be divested out of the owner,* and the Supreme Court of Mississippi would not apply these decisions and settled rules of property in that State for a great length of time, to Mrs. Peeler's lawsuit. Nor did that court apply the "due process" of law clause under the Fourteenth Amendment of the Federal Constitution, though it was brought to the attention of the Supreme Court of Mississippi, in Mr. Peeler's bill by assignment of error "B" and "C," as required. *Pennoyer* v. *Neff*, 95 U. S. 714 and the last decision of *Griffin* v. *Griffin, supra.*

3

The Supreme Court of Mississippi committed error by applying a so-called estoppel as to the vacant lot against George W. Peeler in which it was claimed that he wrote a letter which was admittedly not in existence, in which it was claimed that he told his relative that it was unnecessary in effect for his wife to have filed a suit against him for his property as he never intended to disturb her possession of same. This so-called estoppel as to the vacant lot cannot be used as a shot of adrenalin in the heart to give life to a dead action, Exhibit B, and this, even if true, was admittedly *after* the final decree in Mrs. Peeler's decree of April 13, 1940 (R. —). And therefore "an estoppel cannot create rights but can only protect rights" that have legally existed. *Henry County, et al.,* v. *Standard Oil Co.*, 167 Tenn. 485, 71 S. W. 2d 685, 98 A. L. R. 1483; *Hiltow* v. *Roylance*, 25 Utah, 729, 69 Pac. 660, 58 L. R. A. 723, 95 Am. St. Rep. 821 and like cases. The Supreme Court of Mississippi by its decree in this regard strikes down in effect the judgment granting Peeler a divorce from his wife November 10, 1942 (R. —) and Mrs. Peeler appeared and filed answer in the Tennessee proceedings, known as Exhibit A, and she had

a full and perfect right to make her answer a cross bill, and *sue for and receive any alimony,* if she was entitled to any, and this has been settled law in Tennessee and throughout the United States, except Rhode Island, for more than 100 years, *Sloan* v. *Sloan,* 155 Tenn. 422, and cases cited and discussed. And if this far-fetched and so-called letter was written and ever existed, though it was admittedly not in existence, this could not have *"deterred or prevented"* Mrs. Peeler from asserting any of her rights and claims that she might have had, if any. She did not assert them as shown by the record, Exhibit A. Under Mississippi law since 1923 Ch. 2745 Code 1942 "Marital rights cease with the decree" and this is a legislative recognition of that State, that Mrs. Peeler had no marital rights after the 10th of November, 1942, if she lost in the Tennessee Courts and Mr. Peeler was awarded a divorce in the Circuit Court of Shelby County, Tennessee, to which proceedings, she was a party, and in which she *asserted no claims* or rights. She like all others was presumed to know the law. She is presumed in law to have known that her whole proceedings, known as Exhibit B, was void and could not be given life and used as an estoppel.

The statutory laws of Tennessee where the divorce was granted expressly states that *if the divorce is granted the husband, no alimony shall be allowed the wife* and the law of Tennessee where the divorce was granted Mr. Peeler, was a legislative adjudication that if the courts of Tennessee awarded the husband a divorce the *wife had no right to alimony.* Yet the Mississippi opinion and decree upsets the Tennessee law and the decision of the Tennessee Court that heard the facts, and adjudicated that Mr. Peeler was in the right and Mrs. Peeler was in the wrong. Sec. 8449 Tennessee Code 1932:

> "If the bonds of matrimony be dissolved at the suit of the husband the defendant shall not be entitled to

> dower in complainant's real estate nor to any part of his personal estate in case of his intestacy, *nor to alimony.*"

The Mississippi Supreme Court could not legally hold as it held that Mrs. Peeler was entitled to alimony and was deprived of this by that letter. But this applied only to the vacant lot, not the 14 room residence.

4

The Supreme Court of Mississippi erred in its original opinion by Justice McGehee and on the suggestion of error which was overruled by Justice L. A. Smith, Sr. in holding:

> "Moreover, the appellant, who instituted the present proceeding, *has not offered to do full equity,* toward his wife even if he would thereby be entitled to have *the lot* restored to him which was not sold to her under the deed of trust."

This is surprising and in fact astounding, if we do not recognize that the Judges are human beings like the rest of us, and can make mistakes like other human beings. Yet on a petition for a rehearing and suggestion of error, it was *expressly* called to the Court's attention, as *it was in the reply brief, that by paragraph 14* of the bill filed by Peeler, it is expressly stated:

> "That this house and lot has been rented out for a considerable rental since the divorce decree was granted him by the Circuit Court of Shelby County Tennessee against Essie Peeler on November 10, 1942, to date and that the said Mrs. Essie Peeler has received enough income from said property to pay the $435.00 she paid the Peoples Bank & Trust Company or C. W. Yarber, trustee when she attempted to buy said property. However, if this be not true, or if for any other reason, lawful or equitable, complainant

be not entitled to require the said Essie Peeler to account for the rents of said property since the divorce was granted on November 10, 1942 to date, complainant *offers to do equity* and pay in any and all amounts that may be necessary to pay taxes on said property and said amount of the mortgage of $435.00 together with legal interest to the date that this court decrees same." R. 7.

Beaman v. *Beaman*, 90 Miss. 762 held: "Tender is unnecessary".

The Mississippi Supreme Court and both of these judges simply did not or would not look to the indisputable record otherwise this glaring human error should have been corrected.

5

The Supreme Court of Mississippi committed material error, which perhaps, *is the foundation and basis of its erroneous opinion,* when that Court gleaned from Mrs. Peeler's contention and *charges in her bill,* Exhibit B, (which was without due process of law and totally void and no valid adjudication of *the facts* as alleged under the "due process" clause) when that court said of Peeler:

"He has made no attempt to pay or renew after he had *deserted* her." R. 54.

It was unfortunate that the Court got the erroneous idea from which it would not waiver or correct, that he had *deserted his wife,* and we fear that little else weighed with the Court after it got this erroneous idea.

On page 4 of the opinion it is stated further:

"The foreclosure sale under deed of trust, and at a time when he had *provided no domicile or homestead for her elsewhere.*"

This appears as alleged facts in Mrs. Peeler's bill in Exhibit B, which is a certified copy of the entire proceedings,

that Mrs. Peeler filed which was void of all due process, and it is astounding that the Supreme Court of Mississippi would seize upon *such language as this to base its erroneous holdings.* On page 5 of the opinion discussing the default in the payment of the indebtedness under which the foreclosure was made the court erroneously *stated as a fact:*

> "Or to pay the expenses of the *last illness and burial in connection with the death of his mother,* which were enforceable against the lot and residence which he had inherited from her."

This was only the averments in Mrs. Peeler's bill which fell with void process and decree.

There were other misstatements of facts, or rather statements of facts appearing in Mrs. Peeler's bill and her bill was an *ex parte* proceedings which facts were not *adjudicated lawfully,* and if the process was void, the decree fell with the process, but Justice McGehee and that Court seemed to overlook this *important and controlling fact.* And from the Court's discussion of *these facts that were not established* but were in law merely *statements by Mrs. Peeler in the bill which she hoped to sustain,* but which was *void of all due process* under Mississippi decisions as well as under the "due process" clause of the Fourteenth Amendment, and *all its averments* and *the decree* fall by reason of *their invalidity.*

Mr. Peeler's bill shown in Exhibit A said *"that he had offered to Mrs. Peeler a home in Memphis"* and had *"requested her to move to Memphis with him and she refused".* The bill further said that *when she did come* to Memphis shortly before Mr. Peeler filed his divorce proceedings, she came as a "pistol toting Mamma" with a pistol in her handbag seeking an interview with Peeler saying that she just wanted to have one more meal with

him, meaning that she would poison him, and she had been wrongfully and continually accusing him of adultery. For the wrongs of Mrs. Peeler, Mr. Peeler was adjudicated in the right and that Mrs. Peeler was in the wrong, yet the Supreme Court of Mississippi in effect seemed to get the idea that *he had deserted her,* and based its opinion on that idea which in effect destroyed Mr. Peeler's rights under the full faith and credit clause of Art. 4 Sec. 1 of the Federal Constitution. This court has said:

> "Whatever springs the state may set for those who are endeavoring to assert rights that the state confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."
>
> *Davis* v. *Welcher,* 263 U. S. 22, 24.

The Supreme Court of Mississippi ought not to have deprived Mr. Peeler of his *federal rights* by erroneously acquiring and erroneously stating *facts* that were not *adjudicated* and which had no valid foundation, no valid process, and therefore the decree Exhibit B, by the Chancery Court of Prentiss County, Mississippi, fell with the void process.

Reasons Relied upon for Granting the Writ

It is submitted that this Court should entertain jurisdiction for the following reasons:

1

The Federal question that the Supreme Court of Mississippi has in numerous cases held that for at least 50 or 60 years that *a wife could not buy in her husband's property and acquire title thereto but only a lien for the money she has expended,* has been settled, and *this rule of property or equity has been applied to other litigants in the State*

since the birth of said law *until this Peeler case*, and then the Supreme Court would not apply or did not apply this law against Mrs. Peeler in favor of Mr. Peeler that had been applied against others in like circumstance, and this offended and was in direct violation of the "equality clause" in the Fourteenth Amendment of the Federal Constitution which was *set forth in the pleadings* of Mr. Peeler and in *assignment of error* before the Supreme Court of Mississippi, Assignment D, R. 49. *Beaman* v. *Beaman*, 90 Miss. 762, 44 So. 987 in which the Court held:

> "Neither he nor she, *being the wife*, could acquire adverse right by purchase because it is in controversion of public policy".

"Where confidential relations exist between the parties" the same was held in the following cases:

Wyatt v. *Wyatt*, 81 Miss. 219, 32 So. 450, involving a 1700 acre tract of land;

Cameron v. *Lewis*, 56 Miss. 601, wife of a brother-in-law;

Howell v. *Shannon*, 80 Miss. 598, 31 So. 965;

Walker v. *Williams*, 84 Miss. 392, 35 So. 415;

Jones et al. v. *Merrill, et al.*, 69 Miss. 747, 11 So. 33;

Stewart v. *Matheney*, 66 Miss. 21, 5 So. 387, 14 Am. St. Rep. 530;

Hatchett v. *Thompson*, 165 So. 113, — Miss. —;

Clark v. *Rainey*, 72 Miss. 151, 16 So. 499;

McLaughlin v. *Green*, 48 Miss. 175;

Hamblet v. *Harrison*, 80 Miss. 118, 31 So. 580, a lawyer can not buy at a sale in which he is acting attorney.

Wade v. *Barlow*, 99 Miss. 33, 54 So. 662;

Robinson v. *Lewis*, 68 Miss. 69, 8 So. 258, 10 L. R. A. 101, 24 Amer. St. Rep. 254.

The *reason* and the *test* recognized in all of the above cases was stated in the above last case as follows:

> "If the *rule* which prevents one spouse from securing a title where the other is disqualified rested only upon a supposed *privity of estate between them*, it might well be argued that our statutes upon the subject have destroyed its foundation. *But the rule is founded* upon considerations of *public policy*, and *conclusively imputes* to the one, as derived from the other, *knowledge of those facts the existence of which precludes the other from action.* The *opportunities* that would be afforded for *fraudulent practice would be so numerous*, and *the difficulty of exposing them so great*, that courts apply the doctrine of estoppel *to both*, and thus *close the door that offers the temptation.*" 68 Miss. 69.

Thus we have an unbroken line of decisions for at least 60 years in Mississippi in which it has been held that *any person in confidential relations to another cannot buy in and acquire title to such person's property* but will only acquire a lien for the money expended.

This application of the "*equality clause*" was not only *pleaded* by Mr. Peeler but was *set forth in assignment of error D* but the Supreme Court of Mississippi *would not apply the law to Mrs. Peeler* that *it had applied to all others* and give Mr. Peeler the benefit of the *equality clause* and thereby deprived him of the Federal Constitutional right which he had set forth in his bill and in his assignment of error. And it has been held of the equality clause:

> "It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes of persons in the same place and under like circumstances."
>
> *Missouri* v. *Lewis*, 101 U. S. 22.
>
> "It is beside the point to say that plaintiffs had no vested right in equity relief and that taking it away does not deprive them of due process of law * * * the equality clause forbids the granting of equitable relief to one man and denying it to another under like circumstances and in the same territorial jurisdiction."
>
> *Truax* v. *Corrigan*, 257 U. S. 312, 336.

2

The Supreme Court of Mississippi seemed to give force and effect to Mrs. Peeler's lawsuit which had no process that was due process of law and therefore the process and the decree both fall by reason of the due process clause of the Fourteenth Amendment which was pleaded in Mr. Peeler's bill and expressly pointed out to the Supreme Court of Mississippi in Assignment of Error B and C, R. 48, 49. And that court should have followed its decision rendered in 1903, or 43 years ago, in *Larson* v. *Larson,* 82 Miss. 116, 33 So. 717 applying "due process" where the *facts* were identical in *substance and legal effect* to the *facts* in Mrs. Peeler's case, Exhibit B, yet the Court *would not apply this law in favor of Mr. Peeler against Mrs. Peeler.* In fact it had been held expressly and unequivocally for 127 years by the Supreme Court of Mississippi, prior to the *Peeler* case, that *process by publication* and *not served upon the person, nor appearance,* nor answer, the process and decree was absolutely void; that deprived the defendant of property under the following cases:

1818—*Relf & Chew* v. *Randolph,* 1 Miss. 1;

1842—*Hunt* v. *Johnson,* Freeman Chancery 282—Chancellor Buckner;

1843—*Gwin et al.* v. *McCarroll,* 1 S. W. 351, Clayton J.;

1950—*Edwards et al.* v. *Toomer et al.,* 14 S. W. 75, Clayton J., with William L. Sharkey, Ch. J.;

1856—*Bias* v. *Vance,* 32 Miss., 198, Hardy, J., a leading case;

1858—*N. O. J. Grt. N. R. Co.* v. *Hemphill,* 35 Miss. 1, 24 Ch. J. Smith;

1874—*Brown* v. *Board Levee Comm.,* 50 Miss. 468, Simrall J.;

1884—*Tablor Credup Co.* v. *Mitchell,* 62 Miss. 432, 439, Cooper J.;

1890—*Cudalac* v. *Strong,* 67 Miss. 705, 7 So., 543 Ch. J. Woods, quoting and following *Pennoyer* v. *Neff,* 95 U. S. 714;

1903—*Larson* v. *Larson,* 82 Miss. 116, 33 So. 717, Suit for alimony, process by publication void. Calhoun, J.;

1905—*Advance Lbr. Co.* v. *Laurel Nat'l Bk.,* 86 Miss. 419, 38 So. 313, Ch. J. Whitfield;

1916—*Dunwiddie* v. *Glass,* 11 Miss. 449, 71 So. 745, Stevens, J.;

1917—*Delta Ins. & Realty Co.* v. *Interstate Fire Ins. Co.,* 113 Mis.s 542, 74 So. 420, Holden, J., a leading case;

1921—*Columbia Star Milling Co.* v. *Brand,* 115 Miss. 625, 76 So. 557, Sykes J. Service after return day void;

1923—*Burns* v. *Burns,* 133 Miss. 485, 97 So. 814, Anderson, J.;

1932—*Aldridge* v. *First Nat'l Bk.,* 144 So. 469, court *In Banc* Ch. J. Smith;

1940—*York* v. *York,* 187 Miss. 465, 193 So. 330, Ethridge J.

It is astounding that the Supreme Court of Mississippi would not follow its own decisions that had been applied against other litigants for 127 years. Undoubtedly the process and decree in Mrs. Peeler's lawsuit were void under the due process clause of the Fourteenth Amendment, *Pennoyer* v. *Neff,* 95 U. S. 714, 24 L. Ed. 565, (1878) and numerous other cases since that, ending in *Griffin* v. *Griffin,* February 25, 1946. In fact Chief Justice Woods in 67 Miss. 705 as early as 1890 quoted and adopted as the law of Mississippi the rule announced by Mr. Justice Fields in the *Pennoyer* v. *Neff* case. The Supreme Court of Mississippi *quoted as adjudicated facts* those set forth in Mrs. Peeler's

bill and gave *full force and effect to that proceedings* that was without valid process and therefore the decree fell with the void process, yet the Supreme Court of Mississippi did not expressly and conclusively pass upon this question. The Court has long ago settled the rule of law on the "due process" and "equality clauses" of the Fourteenth Amendment, *which were pleaded* by Mr. Peeler *in his bill,* and which were brought before the Supreme Court of Mississippi in *Assignment of Error C & D* but which were not expressly mentioned by that Court. The Supreme law of this land said:

> "These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws."
>
> *Truax* v. *Corrigan,* 257 U. S. 312, 334.

Under Sect. 2731 Code of 1942 of Mississippi and the record, Exhibit B, shows that no writ of attachment issued, and no levy made by the sheriff on this property nor on the title of George W. Peeler, and therefore the proceeding *did not bring the property in custodia legis* and was void under all of the decisions of Mississippi set forth above, consisting of 17 former decisions extending over 127 years. That Court did, however, hold that a far-fetched letter (not in existence) might act as a shot of adrenalin in the heart of this dead proceedings to give it life.

3

The far-fetched, unsound and illogical proposition that an estoppel might apply as to the vacant lot, we submit this is without foundation in fact and in law. This flimsy proposition is based upon Mrs. Peeler's allegation that Peeler wrote a letter to his relative in which:

"He expressed fully that he did not intend to take this land away from this defendant even *if she had not filed any suit* he intended for her to have it, and that it was low down and sorry in her to take it to court when it was his intention for her to have it anyway. All of which misled her to believe that her recovery of these lands met with his approval and ratification and led her to believe that the sale of said lands were satisfactory to him and met his approval and was by him ratified." R. 58. This phantom letter admittedly related only to the suit, Exhibit B, and not the Trustee's sale.

This was *after* the happenings of this suit. The proceedings, Exhibits B and D were either *good or bad* valid or invalid in law *when they happened,* and if they were bad or *offended against the law* and had no legal existence, this could not be made a "shot of adrenalin into the heart" of dead things according to law and equity so as to put life into these dead and decaying objects. The courts throughout the Country have held:

"While estoppels may be urged for the protection of a right, they can never create a right."

Henry County et al. v. *Standard Oil Co.,* 167 Tenn. 485, 71 S. W. 2d 683, 93 ALR 1483 and numerous other cases cited and followed in the decisions and appearing in the last author's footnotes.

In a leading case, *Hitlow* v. *Roylance,* 28 Utah 129, 69 Pac. 66, 58 LRA 723, 95 Am. St. Rep. 821 where Dr. Parke had procured *a divorce through the Mormon Church* and his wife married another man, and upon Dr. Parke's death she sued for and it was held that she was entitled to Dr. Parke's estate as wife and her second marriage *could not act as an estoppel* and *validate the void divorce* that was granted by the Mormon Church. Nor could Mrs. Park's marriage to another man validate such invalid marriage my estoppel.

Corpus Juris, and Ruling Case Law cite great wealth of American decisions so holding. In Tennessee it had been settled for over a 100 years in *Richmond* v. *Richmond,* 18 Tenn. 344 that:

> "Divorce suits whether in Chancery or Circuit Court are in their essential nature and for all intents and purposes chancery proceedings." 155 Tenn. 428.

As Mrs. Peeler through her distinguished counsel filed a lengthy answer to George W. Peeler's bill (see in Exhibit A certified under the Acts of Congress) she could have sued for *any claims or demands* that she had against George W. Peeler and the Circuit Court of Shelby County Tennessee had full power, jurisdiction, and the willingness to mete out "all equities between the parties." *Sloan* v. *Sloan,* 155 Tenn. 422, 425, 426, 427, 428. In 19 C. J. 27 and in 9 R. C. L. 44 Sec. 21 the flag was unfurled notifying Mrs. Peeler when she filed her answer in the Circuit Court of Shelby County Tennessee that she could sue for *any claims whatsoever she had lawfully or equitably* in said Circuit Court. She filed her answer trying to keep George W. Peeler from divorcing her, but *she filed no cross bill* as she had a right to do if she had any claims for alimony. She, like all other persons, was charged with the knowledge of knowing the law where she filed that answer through her distinguished counsel.

As a fact in law, equity and justice the *door was wide open* for her to enter and assert *any claims she had,* which she failed to assert and sustain. Therefore, to hold even an estoppel applying to the vacant lot in Mississippi, would be, *in fact and effect a refusal* on the part of the Mississippi Courts to *recognize the effect of the proceedings set forth in Exhibit A,* and in fact *a refusal to give "full faith and credit" to such proceedings as required under Art. 4, Sec. 1* of the Federal Constitution. Mrs. Peeler is charged with knowing the law of Mississippi and the provisions of the Federal Constitution that her lawsuit at Booneville was

without due process of law and void. She was charged with the knowledge of the law that had been settled in Mississippi for the last 60 years or more as rules of property in which hundreds and thousands of dollars worth of property were involved, and where that Court had held for all that time that "persons in confidential relations to another cannot buy in his property and acquire title adversely." And it was expressly held and the flag unfurled to the people of Mississippi for more than 50 years that:

> A wife cannot under Mississippi public policy buy in at a foreclosure sale the property of her husband and acquire adversely his title but all she can do is ask to be reimbursed for the money she has expended.
>
> *Beaman* v. *Beaman*, 90 Miss. 762, 44 So. 987.

Estoppels are never applied where:

> "Both parties have the same means of ascertaining the truth from court proceedings to which they are parties."
>
> *Tate* v. *Tate*, 126 Tenn. 169, 214, 215, 216, 217, collecting the cases to 1912, 2 Pomeroy Eq. Jur. Sect. 807;
> *Holcomb* v. *Boyston*, 151 Ill. 297;
> *Estes* v. *Jackson*, 111 N. C. 145;
> *Burgess* v. *Seligman*, 107 U. S. 20;
> *Spokane & E. C. Ry. Co.* v. *Whitley*, 237 U. S. 487.

This court has settled the question:

> "It is beside the point to say that plaintiffs have no vested right in equity relief, and that taking it away does not deprive them of due process of law * * * the equality clause forbids the granting of equitable relief to one man and denying it to another under like circumstances in the same territorial jurisdiction."
>
> *Truax* v. *Corrigan*, 257 U. S. 312, 336.

WHEREFORE, your petitioner prays that a writ of certiorari may be issued out of and under the seal of this court directly

to the Supreme Court of Mississippi commanding said court to certify and send to this court on a date certain to be therein designated a full and complete transcript in said court styled, *George W. Peeler* v. *Mrs. Essie Cook Caver Peeler*, to the end that said case may be reviewed and determined by this court and that the petitioner may have such relief as this court may deem proper, lawful, and equitable, and that the opinion and judgment of said Supreme Court of Mississippi may be reversed and that this Court enter such judgment as the Supreme Court of Mississippi should have entered.

GEORGE W. PEELER,
By WILLIAM G. CAVETT,
Memphis, Tennessee,
Attorney for George W. Peeler.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.

GEORGE W. PEELER,

Petitioner,

vs.

MRS. ESSIE COOK CAVER PEELER,

Defendant

BRIEF IN SUPPORT OF PETITION

This brief, in support of the petition for a writ of certiorari, seeks to reverse the judgment of the Supreme Court of Mississippi which affirmed the action of the Chancellor of Prentiss County, Mississippi, in denying George W. Peeler's motion to strike Mrs. Peeler's answer for *insufficiency which raised questions solely of law* the same as a demurrer would have raised in fact had it been interposed by Mrs. Peeler.

The questions, *in the pleadings and in the assignments of error* before the Supreme Court of Mississippi raised the fundamental Federal question that Mrs. Peeler's lawsuit at Booneville *was without due process* of law as written in the Fourteenth Amendment and defined by this Court

in its numerous decisions beginning with *Pennoyer* v. *Neff*, 95 U. S. 714, decided 1878 and ending in *Griffin* v. *Griffin*, February 25, 1946.

The further, *fundamental Federal question presented* and involved, is, that the Mississippi Supreme Court having *settled property rights and rules of law* and equity some 50 or 60 years ago *that persons in confidential relations to one another cannot buy in at a foreclosure sale such property, and acquire adversely the title to same;* and that these rules of property and equity having been settled and applied to others in like circumstance for this great length of time, the same rules of property and equity *must be applied* to Mr. Peeler and against Mrs. Peeler under the "equality clause" of the Fourteenth Amendment to the Federal Constitution *as pleaded* in Mr. Peeler's *bill* and pointed out to the Mississippi Supreme Court *in the assignments of error.*

Statement of Case

In interest of brevity Your Honors are respectfully referred to the petition for writ of certiorari herein in which is recited a statement of facts, as well as statement of the history of the case. Repetition would only burden this Court.

Summary of Argument

Federal Question

The questions involved in this *Peeler* case necessarily involve the interpretation and application of the Constitution of the United States and particularly the Fourteenth Amendment and the due process clause and the equality clause thereof.

Pennoyer v. *Neff*, 95 U. S. 714.

Griffin v. *Griffin*, 90 L. Ed. as to due process.

Truax v. *Corrigan*, 257 U. S. 311, 336 *et seq.* collecting all cases to the date, 1921.

Davis v. *Wechsler,* 263 U. S. 22.

Power Mfg. Co. v. *Saunders,* 274 U. S. 490, 497 and like cases involving the equality clause.

Were Federal Questions Properly Raised?

Both of these Federal questions were properly raised in the pleadings of Mr. Peeler *in his bill* in this cause. And not only was the pleading before the Supreme Court but Assignment of Error B & C expressly raised the Federal question of *due process* as to Exhibit B. And Assignment of Error D expressly raised the *equality clause* which commanded the State of Mississippi to apply to Mr. Peeler the laws that it had applied to others in like circumstances and forbid the State of Mississippi from denying him the equal application of the laws that had been applied to others in like circumstances.

Could Mrs. Peeler Who Was the Wife of George W. Peeler Purchase on May 20, 1940 for $435.00 the Ancestral Home of Her Husband and Thereby Acquire Title Adversely to Him?

In 1913, or 33 years ago, the Supreme Court of Mississippi, in discussing the *confidential relations between husband and wife,* held:

> "It is not founded exclusively upon an *actual voluntary confidence* reposed by one of the married pair in the other, but also *upon the unavoidable confidence which the intimacy of the marriage state produces.*"
>
> *Whitehead* v. *Kirk,* 104 Miss. 776, 61 So. 737, 51 L. R. A. Ns. 187, and a wealth of authorities are cited sustaining this.

In 1890 or 56 years ago in *Robinson* v. *Lewis,* 68 Miss. 69, 8 So. 58, 10 L. R. A. 101, 24 Am. St. Rep. 254, the Court held:

> "If *the rule* which prevents one spouse from securing a title where the other is disqualified rested only upon

a *supposed privity of estate* between them, it might well be argued that our statutes upon the subject have destroyed its foundation. *But the rule is founded* upon considerations of *public policy,* and *conclusively imputes* to the one, as derived from the other, *knowledge of those facts the existence of which precludes the other from action.* The *opportunities* that would be afforded for *fraudulent practice would be so numerous,* and the *difficulty of exposing them so great,* that courts apply the doctrine of estoppel *to both,* and thus *close the door that offers the temptation.*"

That great English Judge, Lord Coke said:

"Reason is the soul of the law."

And it has been said:

"The reason is the soul of the law. When it fails the law itself fails." *Key et al.* v. *Harris et al.,* 116 Tenn. 161, 171.

Therefore all of the reasons for the rule that had been announced in the earlier decisions of Mississippi were crystallized and made the shining point directing the people throughout the State of Mississippi that a wife could not buy in her husband's property nor could the husband buy in her property and acquire title adversely to the other. And that it was established as the public policy of that State as much so as if it were a beacon like a "Rushmore Park Monument" in the Black Hills of South Dakota, or Pikes Peak of Colorado.

The citation and application of the Supreme Court of Mississippi in its opinion to Vol. 26 p. 737 of Am. Jur. discussed alone:

"Execution or judicial sales"

And Mrs. Peeler did not buy at an *execution or judicial sales* which are made under the scrutinizing *eyes of the Courts,*

and the law that was applied against Peeler was fundamentally unsound and incorrect. The Supreme Court of Mississippi, without citation and discussion of its numerous cases holding otherwise, said as to Mrs. Peeler:

> "The wife was occupying the homestead as a matter of legal right, and not at the will or sufferance of her husband. He could not have dispossessed her without her consent if he had desired to do so." See Opinion, 24 So. (2d) 340.

In *Scott* v. *Scott,* 73 Miss. 575 and in the later case of *Col. Mut. Ins. Co.* v. *Jones,* 160 Miss. 41, 135 So. 149 the Supreme Court of Mississippi had settled the law for at least 50 years that; a wife like Mrs. Peeler occupancy the homestead.

> "The wife has no title to the land but only the right to occupy the land so long as she has not forfeited her rights as a wife."

Mrs. Peeler lost her rights as wife Nov. 10, 1942 (Exhibit A.)

This rule of property long settled in Mississippi was not expressly applied to Peeler in this case.

Therefore Mrs. Peeler *in addition* to the[1] *confidential relations existing between she and her husband* which forbid her from acquiring adverse title by purchase,[2] *she was a life tenant* so long as she remained his wife. It has been expressly held and settled as law in Mississippi for more than 50 years that a *life tenant* cannot buy in the property at a tax sale, and hold adversely against the remainderman. In *McLaughlin* v. *Green,* 48 Miss. 173, and in the most recent

---

[1] Where Tennessee Court adjudicated that Peeler was in the right, and Mrs. Peeler was in the wrong.

[2] The trustee's sale at which Mrs. Peeler bought, was May 20, 1940—2 yrs. 6 mos. 20 days before divorce decree.

case of *Hatchett* v. *Thompson*, 165 So. 110 — Miss. — it was held:

> "A purchaser at a tax sale of land in which *he has an interest* as heir, *acquires no additional title.* Blackwell on Tax Titles 400."

In 1892 in *Jones et al.* v. *Merrill et al.*, 69 Miss. 747, 11 So. 23 the Court held:

> "The purchase by tenant for life of a tax title to lands acquired by him *enures to the benefit of those in remainder.*"

In the case of *Stewart* v. *Matheney*, 66 Miss. 21, 5 So. 387, 14 Am. St. Rep. 538 the Court held:

> "A *tenant for life* cannot acquire a tax title to *defeat the title of the remainder man.*"

For two recent settled rules of property, Mrs. Peeler is repelled.

It has been a settled rule of property that if a wife purchases at a tax sale, she merely acquires a lien for the amounts paid, and not a title.

Day v. *Cockran*, 24 Miss. 261;
Davidson v. *Wallace*, 53 Miss. 475;
Allen v. *Poole*, 54 Miss. 334;
Harrison v. *Harrison*, 56 Miss. 174;
McGee v. *Holmes*, 63 Miss. 50;
Fox v. *Coon*, 64 Miss. 465.

And the Mississippi Supreme Court has disregarded the two injunctions, "confidential relations" and life tenancy and awarded Mrs. Peeler *a title* instead of *a lien* for the amounts paid, $435.00. The "equality clause" of the Federal Constitution in the 14th Amendment is indeed "a rope of sand" and binds no one in Mississippi by its present court, if this can be done in this *Peeler* case.

Thus we have the Supreme Court of Mississippi announcing and settling the law of that State which it has applied to other citizens, that a person that has a life estate in land cannot purchase in the title and deprive the remaindermen of same, which is unquestionably applicable to Mr. Peeler's title with the most favorable application in favor of Mrs. Peeler that could be made. A tax sale in fact and in law is a foreclosure under a mortgage on the property to the County and State for taxes owed by all the owners, on the land as *in rem* proceedings.

We now come to the purchase by *a wife at a foreclosure sale* like Mrs. Peeler purchased. 39 years ago in *Beaman* v. *Beaman*, 90 Miss. 762, 44 So. 987 the Court quoting and applying the law that prior thereto had been announced, held:

> "Neither he nor she, *being the wife*, could acquire adverse rights by purchase because it is in controversion of public policy."

In 1902 or 44 years ago in *Wyatt* v. *Wyatt*, 81 Miss. 219, 32 So. 450, the public policy doctrine that had many times before been stated, in which a 1700 acre tract of land was foreclosed and one of the owners F. A. Wyatt bought the property at a foreclosure sale, the court held:

> "The purchase therefore, of the Oregon plantation by F. A. Wyatt, one of the cotenants at the sale of it under the trust deed, did not give him a *greater right or interest* in it than he had before the purchase."

Again in *Howell* v. *Shannon*, 80 Miss. 598, 31 So. 965 where Howell was in *confidential relations to an assessment* that had been made upon the whole property the court held:

> "The *relation of Howell to the assessment* did not permit him to acquire a title to McGinnis part of land, but *at most* gave him a right to subject the land of McGin-

> nis to payment of its proportionate part of the taxes assessed to the whole tract."

In the case of *Cameron* v. *Lewis*, 56 Miss. 601, the Court expressly held that the wife of a brother-in-law to one of the persons who owned the land could not purchase the property and hold it under the public policy of that State.

In 1904 in *Walker* v. *Williams*, 84 Miss. 392, 35 So. 450 involving a purchase by one who had an interest in the property at a foreclosure sale the court held:

> "Wherein *foreclosure of a lien* against *a joint estate* one of cotenants purchased the property, it was proper in partition to *annull the sale* and *reimburse the cotenant the money advanced in liquidating the debt.*"

In 1911 in *Wade* v. *Barlow*, 99 Miss. 33, 54 So. 662 where a *covenantee was in possession of the property*, and of course was not a cotenant, but when he purchased at a foreclosure sale, the court held that this party could not under the public policy of Mississippi acquire a title in opposition to the vendor. And while the facts in that case were different the court said:

> "The same principle is involved."

"The jugular vein" or "the hub of the case" is that the equality clause of the Fourteenth Amendment will not permit the Mississippi Supreme Court to fail to apply the rules of law and equity to Mr. Peeler and against Mrs. Peeler that it has applied to others in like circumstances.

A further and additional *fundamental reason* is that decisions which constitute rule of property affecting titles must and shall be followed. *Pollock* v. *Farmer's Loan and Trust Co.*, 158 U. S. 689, 39 L. Ed. 1108, and like cases. In the *Pollock* case it may be recalled that where the Court granted a rehearing and a reargument of the noted case a brilliant lawyer discusing the rule of *stare decisis* said:

"It is better to remain an hundred years in error than to change and unsettle titles"

And one of the Justices whose eyes were closed like he was asleep and who was in deep meditation opened his eyes and said to the attorney:

"Please repeat that remark"

This was the turning point of that noted case.

Thus the above decisions and those set forth in the petition for certiorari show a stated public policy of that State, and the Supreme Court decision for more than 60 years holding that a person in confidential relations to the owner cannot buy in the property and hold it adversely. Why the Supreme Court of Mississippi, when this was called to their attention, did not apply these decisions and rules of property in favor of Mr. Peeler and against Mrs. Peeler, as it had for more than 60 years, applied to others in like circumstances, is difficult to understand. Unless it be that when the Court *read Mrs. Peeler's bill,* in which she charged her husband with having *"deserted her"* and that *he hadn't paid the expenses of his mother's last sickness and burial,* the Court's eyes were then closed by cataracts of errors so they could not see anything favorable to Mr. Peeler.

This Court has wisely said:

> "Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law',—'This is a government of laws, and not of men; 'No man is above the law'—are all maxims showing the spirit in which legislatures, executives, and courts are expected to make, execute, and apply laws."
>
> *Truax* v. *Corrigan,* 257 U. S. 332, 66 L. Ed. 263.

The Supreme Court of Mississippi did admit:

> "Wherever the husband is disqualified to purchase so is his wife" 24 So. (2d) 340.

Could George W. Peeler have purchased at this foreclosure sale and acquired, while he was her husband, *her rights to the occupancy and use of that home?* To state the proposition, is to but answer it, that he could not under the long line of decisions heretofore cited extending over 60 years before the *Peeler* case.

If this equality clause be not applied against Mrs. Peeler and in favor of Mr. Peeler in this case, we think and urge that the equality clause has become a rope of sand in the State Courts.

Gulf C. & B. Ry. Co. v. *Ellis,* 165 U. S. 150, 154. That what the Constittuion of the United States has given to all its citizens as bread the Supreme Court of Mississippi will not be permitted to convert into stone.

Is the Question of Estoppel as to Vacant Lot in Fact and in Law a Screen or a Sham, or Is It a Discrimination Against Mr. Peeler in Favor of Mrs. Peeler and Unsound under the Documentary Facts Appearing in This Record?

From the discussion by the Supreme Court, 24 So. (2d) 341, that Court seems to give support to the estoppel proposition as a "shot of adrenalin in the heart" of Mrs. Peeler's proceedings in the Chancery Court Exhibit B which was void of due process. The Supreme Court of Mississippi further slightly discusses the proposition that Mr. Peeler *waited two years after his divorce before he filed this lawsuit* but that Court did not expressly state *that he was guilty of laches,* but intimated that this may have resulted in injury to Mrs. Peeler. That Court should have applied the law established in Mississippi for at least 75 years in the case of *Cameron et al.* v. *Lewis et al.,* 59 Miss. 134 in which it was held:

> "He who is out of possession can derive no advantage from the flow of time, and he who is in possession cannot be damaged by it" 59 Miss. 140.

Why the Supreme Court of Mississippi will not follow in this *Peeler* case its long settled rules of equity and law is difficult to understand.

And the Court further said that this letter which we think is a phantom and never had any existence and was admittedly not in existence, yet the court said:

> "It is well settled that a forbearance of a definite or substantial character which has been intentionally induced by the acts of another is binding on such other person *if injustice can be avoided only by the enforcement of the assumed position of him who obtained the benefit of such forbearance.*" 24 So. 2d 341.

We cannot close our eyes to the express language used by that Court in which it said:

> "If injustice can be avoided only by the enforcement of the assumed position of him who obtained the benefit of such forbearance."

This is a statement which could not be sustained in this *Peeler* case because the record, Exhibit A, shows that Mrs. Peeler filed her answer Sept. 18, 1942, and as she came to Tennessee and came into this court which *doors were wide open to her* and filed her answer, it is absurd and unsustainable to say that the "injustice could not be avoided," only by enforcing such estoppel because when she filed this answer she knew or was presumed to know the law of Mississippi that had been established since 1924, Chap. 163, Sec. 2745 Code of 1942 that:

> "Marital rights cease with the decree."

In addition when, she came to Tennessee, in this court of equity, she is presumed to have known the statutory law of

Tennessee that had been established since 1835 or more than a 100 years ago, Sec. 8449 Code of 1932 that:

> "If the bonds of matrimony be dissolved at the suit of the husband, defendant shall not be entitled • • • to alimony."

The law had been established therefore in both of these States, the State in which Mrs. Peeler lived, and the State into which she came to file her answer, and in addition thereto it had been settled in Tennessee and throughout the United States, except Rhode Island, that Mrs. Peeler could have filed a cross bill in her answer, and had the court adjudicate all the equities and give her all the relief to which she was entitled, alimony or anything else. *Sloan* v. *Sloan,* 155 Tenn. 422, 290 S. W. 62, and the wealth of American authorities cited therein.

> "Since a Federal Right is involved, no State court can screen denial of or discrimination against a federal right under guise of enforcing a local law."
> *Miles* v. *I. C. Ry. Co.,* 315 U. S. 698.

Therefore it cannot be held as a law proposition or a question of equity that the forbearance discussed worked an injustice or *could be avoided only* by the enforcement of the assumed position against Mr. Peeler. The Court cannot go further fundamentally and soundly than Mrs. Peeler's answer demanded, which says of this letter:

> "Expressed fully that he did not intend to take this land away from this defendant, even if she had not filed any suit he intended for her to have it, and that it was lowdown and sorrow in her to take it to court when it was his intention for her to have it anyway." (R. 44).

In the case of *Scott* v. *Scott,* 73 Miss. 575, and the later case of *Col. Mut. Ins. Co.* v. *Jones,* 160 Miss. 41, and as well

as the Supreme Court's opinion in this case Mrs. Peeler had:

> "The right to occupy the land so long as she had not forfeited her rights as a wife."

Mrs. Peeler admitted she was in possession of the property.

So to say that this letter affected her use and occupancy of this property is grossly erroneous. And to say that it was a "shot of adrenalin in the heart" and gave the Chancery proceedings known as Exhibit B life to wiggle, wobble, to breathe and to exist when that proceedings was "stillborn" under the *due process clause* of the Fourteenth Amendment, is equally unsustainable and inadmissible.

This court in the case of *Spokane & I. C. R. Co.* v. *Whitley*, 237 U. S. 487, 35 Sup. Ct. 655, 59 L. Ed. 1060, 1915, L. R. A. —, expressly held that where Mrs. Whitley had filed a suit against her daughter in law:

> "To obtain in Tennessee a share of the recovery, but this was a wholly barren proceedings."

And this could not act as an estoppel.

To say, when the doors of the Tennessee Court were open wide to her to file any claim that she had or could assert and sustain, that letter could bring life to the dead proceedings, Exhibit B, is carrying estoppel beyond the bounds of reason, law and equity and further than any court has ever intimated such an unsound proposition.

In Exhibit A, the answer of Mrs. Peeler filed September 18, 1942 in the court of chancery and Christian ethics she said:

> "She admits that George W. Peeler is a resident citizen of Memphis, Shelby County, Tennessee * * *, and that he has been such resident citizen of Shelby

> County for more than two whole years prior to the filing of this bill." (R. 17.)

And in the 11th section of her answer in this cause she says:

> "She denies that complainant ever moved his residence to the City of Memphis, Shelby County, Tennessee until just prior to the 7th of September, 1942, and that she had no notice of any separation between them at that time."

Oh, Consistency, thou art a jewel!

In line with this Court's decision in the *Whitley* case, 237 U. S. *supra,* the Tennessee court has announced the law:

> "While estoppels may be urged for the protection of rights they can never create a right."
>
> *Henry County et al.* v. *Standard Oil Co.,* 167 Tenn. 485, 71 S. W. (2d) 683, 98 A. L. R. 1483.

And this is in line with the decisions throughout the United States and is shown by the author's notes in the last named publication.

Herman on Estoppels, Sec. 793, 889, expressly states the law as follows:

> "It is a cardinal principle of the law of estoppel that they must be mutual to be effective for any purpose."

This is approved in *Nunnelly* v. *Sou. Iron Co.,* 94 Tenn. 397, 29 S. W. 361, 21 L. R. A. 421, and seems to be the rule generally.

In *Tate* v. *Tate,* 126 Tenn. 169, 148 S. W. 1042, it was expressly held, that:

> "Where both parties have the same means of ascertaining the truth from the court records there can be no estoppel."

And great wealth of American decisions are collected and followed. This is in line with this Court's holding in the *Whitley* case, *supra*:

"Since a Federal right is involved no court can screen denial of, or discrimination against a federal right under the guise of enforcing its local law."
Davis v. *Welschter,* 263 U. S. 22;
Sou. Ry. Co. v. *Painter,* 314 U. S. 155, 159-60;
Miles v. *I. C. R. R. Co.,* 315 U. S. 698.

Was Mrs. Peeler's Proceeding in the Chancery Court, Exhibit B, Void under the Due Process Clause of the Fourteenth Amendment Pleaded in Mr. Peeler's Bill and Point Out to the Supreme Court in Assignments of Error C and D?

From the very first page of the first decision rendered in the State of Mississippi in 1818, *Ralph & Chew* v. *Randolph,* 1 Miss., to 1903, *Larson* v. *Larson,* 82 Miss. 116, 33 So. 717, where the facts are identical with those in this *Peeler* case and where Mrs. Larson sued for alimony merely on publishing of notice for Larson who was in Minnesota and the homestead which she and her daughter were occupying was not attached, and the title to same was in Larson in Minnesota, and it was held that this was not due process of law and was void. And the two leading cases in Mississippi are, *Bias* v. *Vance,* 32 Miss. 198, and *Delta Ins. & Realty Co.* v. *Interstate Fire Ins. Co.,* 113 Miss. 542, 74 So. 420, however Mississippi Supreme Court before this *Peeler* case has consistently in all 17 or more published opinions heretofore set forth in the petition, has not hesitated to hold process void that did not conform to the due process clause of our Federal Constitution. It is surprising that these decisions were not applied in Mr. Peeler's case as he raised the validity of the process in his pleadings and in his assignments of error as to Mrs. Peeler's suit, Ex. B. By the record, Exhibit B, the indisputable record certified to under the acts of Congress, that Mr. Frank Felker, clerk *did not attach his official seal* to the only process that is

claimed to have been issued, that is by *publication notice.* For 75 years or more *before the Peeler case* it was expressly held that the clerk's failure to affix his official seal rendered the process void.

Pharris v. *Comer,* 3 Smedes & M. 87;
Beaverton v. *Cramer,* 123 Miss. 848, 86 So. 578;
McCallum v. *Spinks,* 129 Miss. 237, 91 So. 694;
Hatchett v. *Thompson,* — Miss. —, 165 So. 113.

Why the Supreme Court of Mississippi would not apply these rules of law that had been established for over 75 years and had been applied against other litigants in the same territory and under like circumstances is difficult to understand. The case of *Pennoyer* v. *Neff,* 95 U. S. 714, and all the other cases that have been decided by this Court before this Court decided *Griffin* v. *Griffin,* February 25, 1946, was called to the attention of the Supreme Court of Mississipi and it was expressly called to the attention of that Court that as early as 1890 in *Cudabac* v. *Strong,* 66 Miss. 705, that the Supreme Court had quoted and adopted and followed the *Pennoyer* v. *Neff* case.

The Supreme Court of Mississippi, 24 So. (2d) 339, said:

> "The decree in this former proceedings merely adjudicated the husband's ability and obligation to pay a substantial amount for the support of his wife * * * it undertook to award the property to her in lieu of money for her support and maintenance instead of ordering the same sold to pay any amount in her favor. The decree further found that the wife was in possession of this property in the exercise of her homestead right and that she had surrendered it to the jurisdiction of the court or 'brought it before the court.' "

The Court without passing on any of the federal questions, or any other question that absolutely invalidated the whole proceedings, unfurled the flag and told the parties in

substance and effect that such a proceedings was valid. If, where process is absolutely void, a litigant's attorney or even, the court can write in a decree that the property was "brought before the Court" when it was admittedly land and admitted that the title was in George W. Peeler in Memphis, Tennessee, then indeed process to bring people into court is simply legislated by the Supreme Court of Mississippi that all process is unnecessary and a litigant need only have a good lawyer or a friendly court which will write into the decree that the "property was brought into court." And due process about which this court has written so much and made so clear, is paralyzed and rendered inefficient and exists only in a State, to use Mr. Grover Cleveland's verbiage, "rendered into innocuous desuetude."

In our early Sunday School training we recall in sacred history that Father Noah sent a dove out to see if dry land existed, and it finally returned with a twig to indicate that there was dry land somewhere and that the flood was subsiding. We recall in our early legal education the feudal system of taking a man to the land and delivering him a twig or a piece of sod and to be putting him in possession of the property which he owned from Heaven to Hades. Such a procedure in Mississippi has never existed in the 128 years of the State's existence as shown by its published reports. From its earliest legislation to Sec. 2731 of the Code of 1942 the statute says:

> "If the *land* of the non resident absent, or absconding debtor *be the subject of such suit* a writ of attachment shall be issued and shall be levied by the sheriff or other officer as such writs of law are required to be levied upon land, and shall have like effect."

In 1856, *Bias* v. *Vance*, 32 Miss. 198, that court held that unless the land was levied upon it was not before the court, and the whole proceedings was void. The same was ex-

pressly held in 113 Miss. 542 and in fact all other cases. We think that when the Supreme Court of Mississippi said that the property was brought into court, and this does appear in the decree which divested, or attempted to divest, the title out of George W. Peeler in and to that property on April 13, 1940, R. 39, 40 which says:

> "All of the right, title and interest and equity of the defendant George W. Peeler, to aforesaid property be and the same is now and here divested out of him and invested in complainant Essie Peeler."

that the court in such a decree divested title out of George W. Peeler and he was never before the court, and such is unquestionably not due process of law under State and Federal court holdings.

As the record is totally silent as to the means and methods that Mrs. Peeler pursued to bring that 14 room ancestral home of George W. Peeler's and approximately two acres of land through a three by seven foot window or the same size door into Court, when George W. Peeler owned this property from Heaven to Hades is indeed a miracle. And was in fact a Houdini trick that ought not to be adopted and followed by the Courts as "due process."

Conclusion

"Wherever 'commerce among the states' goes, the power of the nation as represented in this court, goes with it to protect and enforce its rights."

Gilliam v. *Philadelphia,* 70 U. S. 713, 18 L. Ed. 96, 99; C. & F. Re Debs, 158 U. S. 565, 39 L. Ed. 1021, 1105.

So does the power of the nation as represented by this court goes to enforce Mr. Peeler's rights to have his lawsuit decided upon the rules of equity and law that have been established in Mississippi for the last 50 or 60 years and

applied to all others in like confidential relations between husband and wife.

"Due process of law" and "equal protection of the laws", is the same in every parallel of latitude and every meridian of longitude throughout the United States, even in Mississippi, where it was not recognized and applied in this *Peeler* case.

If Mississippi Courts can successfully Santa Claus Mr. Peeler's property to his former wife, Mrs. Peeler, like the Courts of Mississippi have tried to do, then we think that the "privilege" and "immunity clause," and the "equality" and the "due process" clause of the 14th Amendment of the Federal Constitution have become in that State, in the picturesque language attributed to Abraham Lincoln, "As thin as the homeopathic soup made by boiling the shadow of a pigeon that had starved to death."

With the fullest measure of confidence in the ends that will be reached by Your Honors, we most respectfully submit client's rights in the foregoing petition and brief.

WILLIAM G. CAVETT,
Memphis, Tennessee,
Attorney for George W. Peeler.